

Study Em-458

April 7, 2000

First Supplement to Memorandum 2000-24**Early Disclosure of Valuation Data and Resolution of
Issues in Eminent Domain**

We have received the attached letter from Norm Matteoni in support of the Commission considering prejudgment deposit issues as part of our project on early disclosure of valuation data and resolution of legal issues.

Mr. Matteoni makes the following points:

- The condemnor's prejudgment deposit of probable compensation to obtain possession of the property is almost always the same as the precondemnation offer.
- If the condemnor's prejudgment deposit appraisal is not in fact based on meaningful information, then it is not serving its intended purpose.
- The condemnor's disclosure of supporting data for the prejudgment deposit would stimulate meaningful negotiations at an early stage. If we wait until valuation data are exchanged just prior to trial, it will be too late — the case will have been set on a litigation course by then. Disclosure at the earliest opportunity is preferable.
- There are examples of agencies that do clearly define the method of valuation and attach a summary of comparable sales as part of their summary statements of the prejudgment deposit appraisal.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



March 27, 2000

Law Revision Commission
RECEIVED

MAR 28 2000

File: _____

Nathanial Sterling, Esq.
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Rm. D-1
Palo Alto, CA 94303-4739

Re: Early Disclosure of Valuation Data and Resolution of
Issues in Eminent Domain; February 8, 2000 Letter
from CalTrans Legal Department

Dear Nat:

A weeks or so ago, I received the February 9, 2000 Third Supplement to Memorandum 2000-12 with the attached letter from the CalTrans Legal Department.

I note that CalTrans objects to proposed amendments to Sections 1255.010 and 1255.030 of the Code of Civil Procedure. Further, CalTrans states that the comments in my letter to the Commission of December 7, 1999 relate only to problems with appraisals prepared to support the condemnor's deposit of probable compensation required before it can seek an order for possession of property being acquired. That observation is technically correct. But that deposit is almost always the same as the precondemnation offer required by law.

If the Commission is seeking means to encourage early resolution, I am still convinced that a requirement that the condemning agency provide more data to support its initial position will stimulate meaningful negotiations at an early stage.

But, more importantly when CalTrans states that the appraisals used to support the initial offer are "not typically those used at trial or those exchanged with the condemnee", the clear implication is that those appraisals are not truly

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March 27, 2000
Page two

indicative of probable compensation. If public agencies choose to use staff appraisals simply to meet a checkoff of requirements to obtain an order of possession, they are undercutting the opportunity for early resolution.

It has been my experience in such situations that you do not see the trial appraisal figures until the exchange. Whether the exchange is made 40 days, 60 days or the 120 days before trial, requested by Mr. Nave, the case has been set on a litigation course by the agency not addressing its constitutional mandate at the earliest opportunity.

I have seen examples of public agency Summary Statements that clearly define the method of valuation and attach a summary of comparable sales. BART follows this practice.

Very truly yours,


NORMAN E. MATTEONI

NEM:sd